SINGAPORE REPORTS

LAI WEE LIAN v. SINGAPORE BUS SERVICE (1978) LTD.

[C.A. (Kulasekaram, Chua & Rajah JJ.) May 28, 1982]
[Singapore – Civil Appeal No. 13 of 1982]

Damages – Quantum – Global award for personal injuries – Appeal against award for prospective loss of future earnings – Appellate Court's refusal to interfere.

The learned trial Judge in Suit No. 2580 of 1979 awarded the plaintiff/appellant damages for personal injuries in the sum of $146,917.40 which included the sum of $37,056 for the appellant's prospective loss of future earnings. The appellant appealed against the award of $37,056 on the ground that it was inadequate. The respondent cross-appealed on the decision in respect of the assessment of loss of amenities in the sum of $40,000 on the ground that it was excessive.

Held, dismissing the appeal and the cross-appeal: (1) what really matters in cases of damages for personal injuries is the global figure arrived at by a trial Judge even if he has calculated the damages under a number of recognised heads. If the global figure arrived at is, in the particular circumstances of each case, reasonable and fair, then any appellate court would not increase or decrease a component item of damage on the basis that such item is low or excessive;

(2) the court therefore would not interfere with the award and there would be no order as to the costs of the appeal.

CIVIL APPEAL.

V. Ramakrishnan for the appellant.

Abdul Rashid bin Abdul Gani for the respondents.

Cur. Adv. Vult.

Rajah J. (delivering the Judgment of the Court): This is an appeal by the Appellant (Plaintiff) who was born on the July 22, 1955, against the judgment of the learned trial Judge in Suit No. 2580 of 1979 for damages for personal injuries wherein he awarded a total sum of $146,917.40, which included the sum of $37,056.00 for the Appellant's prospective loss of future earnings.

The Appellant is dissatisfied with the said award of $37,056.00 on the ground that the same is inadequate having regard to the evidence adduced in Court, the circumstances of the case and the general trend of awards on future earnings.

The Respondents for their part have cross-appealed on the decision in respect of the assessment of loss of amenities in the sum of $40,000/- and contend that it ought to be varied on the ground that the assessment of loss of amenities in the sum of $40,000/- was extremely excessive and against the trend of awards in other similar or more severe cases.

We have considered the arguments of both counsel in respect of loss of future earnings and loss of amenities. We are of the view that what really matters in cases of damages for personal injuries is the global figure finally arrived at by a trial Judge even if he has calculated the damages under a number of recognised heads. If the global figure arrived at is, in the particular circumstances of each case, reasonable and fair then we do not think that any appellate Court would increase or decrease a component item of damage on the basis that such item is low or excessive. In the instant case the sum arrived at for loss of amenities is $40,000/- and that for loss of future earnings is $37,056.00 computed on a multiplier of 10 applied to a base figure of $400/-. We ourselves think that perhaps a multiplier of 10 is not adequate considering that the Appellant was born on the July 22, 1955. However, we are also of the view that the award of $40,000/- for loss of amenities is somewhat generous in all the circumstances of the instant case. On the whole we think that these two items balance each other off to the extent that in our view the global figure of $146,917.40 arrived at is on the whole a fair assessment of the damages for personal injuries suffered by the Appellant in the instant case.

We therefore do not propose to interfere with the award herein one way or the other and in view of what we have said we also do not propose to make any order as to the costs of the appeal.

Appeal and cross-appeal dismissed.

Solicitors: *V. Ramakrishnan & Co.; Khattar, Wong & Partners.*

FAN PO KIE v. TAN BOON SON

[O.C.J. (Abdul Wahab Ghows J.) September 19, 1981]
[Singapore – Originating Summons No. 349 of 1981]

Family Law – Divorce – Matrimonial home – Wife's claim for possession of H.D.B. flat which was purchased jointly by couple for benefit of family.

The plaintiff claimed possession against her husband, the defendant for the matrimonial home. She also agreed to pay the defendant such sums of money that had been paid by the defendant towards the said home. The facts revealed that the lease of the former matrimonial home which was a H.D.B. flat was purchased by the defendant and the plaintiff as joint-tenants from the Housing & Development Board under an agreement dated February 5, 1976. The plaintiff left the matrimonial home in February 1979 with the two children of the marriage as a result of the defendant's cruelty. Her petition for divorce was granted on April 2, 1979 and made absolute on July 5, 1979. She was granted custody of the two children and received monthly maintenance payments.

Held, allowing the plaintiff's claim: (1) as the flat in question was purchased jointly by the plaintiff and the defendant as their matrimonial home for the benefit of the family, the court should not endorse the defendant's action in compelling his wife and children by his cruelty to leave the flat and should not back up such action by ordering the plaintiff to sell her share in the matrimonial home;

(2) as the plaintiff was prepared to refund to the defendant whatever monies he had paid towards the purchase price of the matrimonial home, it was equitable in the circumstances that the defendant should be ordered to deliver up to the plaintiff possession of the matrimonial home and to convey and transfer all his rights, powers and interests in the said property to the plaintiff.

ORIGINATING SUMMONS.

Michael Hwang for the plaintiff.

Noor Mohamed Marican for the defendant.

Cur. Adv. Vult.

Abdul Wahab Ghows J.: The abovenamed Plaintiff (Madam Fan Po Kie) by way of Originating Summons No.

349 of 1981 sought the following orders:

(a) that the Defendant (Tan Boon Son) do deliver up to the Plaintiff possession of the former matrimonial home known as Block 71, 236-Y Marine Drive, Singapore 1544 (hereinafter called the "matrimonial home");

(b) that the Defendant do convey and transfer all his rights, powers and interests in the said property to the Plaintiff and that the Defendant do carry out all such actions and execute all such documents as are necessary to convey and transfer the said rights, powers and interests upon payment by the Plaintiff to the Defendant of such sums of money that have been paid by the Defendant to account of the purchase price of the said property;

(c) that the Defendant pay the costs of these proceedings.

After hearing submissions from counsel for the Plaintiff and Defendant, I made an order in terms of the motion above and also ordered the Registrar to determine the amount payable by the Plaintiff to the Defendant pursuant to item (b) of my order.

According to the affidavit filed by the Plaintiff herein on July 2, 1981 in O.S.349/81, the lease of the former matrimonial home which is a HDB flat was purchased by the Defendant and the Plaintiff as joint tenants from the Housing & Development Board as evidenced by an agreement dated February 5, 1976.

The Defendant and the Plaintiff entered into this agreement as joint tenants on the basis that they were husband and wife, both contributing to the purchase price of the matrimonial home for the benefit of each other and for their children. This was not denied by the Defendant. In the same affidavit the Plaintiff said that she was compelled to leave the matrimonial home in February 1979 together with the two children of the marriage owing to the cruelty of the Defendant. Subsequently she petitioned for a divorce on the ground of the Defendant's cruelty. Her petition was uncontested and the *decree nisi* was granted on April 2, 1979. She was also granted custody of the two children of the marriage and the question of maintenance was adjourned to be heard in Chambers. The *decree nisi* was made absolute on July 5, 1979. On April 11, 1980 the Defendant was ordered to pay to the Plaintiff a monthly maintenance of $150 for herself with effect from May 1, 1979 and $300 for each of the two children of the marriage with effect from April 1, 1979. The Defendant was irregular in making the monthly payments ordered by the court and finally on the application of the Plaintiff an attachment of earnings order was made by this court on November 24, 1980 and since February 1981 the Plaintiff has received monthly maintenance payments from the Ministry of Education. The Defendant was at the date of the Plaintiff's aforesaid affidavit in arrears of maintenance amounting to $7,350 and according to the Plaintiff the Defendant has so far not made any attempt to pay his arrears despite requests from her solicitors for him to do so.

The Plaintiff and the two children after they were compelled to leave the matrimonial home were, at first, staying in premises rented by the Plaintiff's relatives but had to vacate the premises as the Landlords wanted vacant possession of the premises to be delivered to them. The Plaintiff said that under section 41(1) of the Housing & Development Act (Cap. 271) she was precluded from purchasing another Housing Board flat as she was still a joint tenant of the former matrimonial home with the Defendant. She also had been informed by the Housing & Development Board that they could not rent her a HDB flat because of her co-ownership of the former matrimonial home.

The Plaintiff in her affidavit also stated that she had made substantial contributions by paying for renovations to the matrimonial home and by contributing until August 1979 towards the monthly instalments payable to the H.D.B. According to the Plaintiff, since she left the matrimonial home with the children in February 1979, she and her children have had to move four times. As rents were increasing all the time, the Plaintiff said that she could not afford to shoulder the financial burden of having to rent a flat to accommodate herself and the children and a servant, and of having to apply constantly for the maintenance order against the Defendant to be varied. In her affidavit filed on August 13, 1981, the Plaintiff said that she was paying $400 per month rent for the premises in which she now resided. According to the Plaintiff, the Defendant had a brother who owned several houses in Singapore.

The Defendant, in his affidavit in reply, said that it was unfair, unreasonable and inequitable for the Plaintiff to apply to this Honourable Court to allow her to reside in the former matrimonial home in his stead as she had obtained a maintenance order for herself and the two children of the marriage. He added that when making the said order the court had taken into consideration the accommodation expenses of the Plaintiff and the two children and therefore the Plaintiff was not entitled to apply to reside in the former matrimonial home in view of the said order. He then compared his earnings as a teacher with the Plaintiff's salary as a Research Officer. He said that after deducting the maintenance he was required to pay the Plaintiff for herself and the children every month, he had only $760 left to maintain himself and his aged mother and to pay for the monthly instalments for the former matrimonial home and for its general maintenance. He added that if he had to leave the former matrimonial home and reside elsewhere, he would not be able to survive with an income of $760. He complained that the Plaintiff had ceased to contribute towards the monthly instalments payable towards the matrimonial home since September 1, 1979 and this had increased his financial burden. He added that his aged mother who was 73 years old resided with him in the former matrimonial home as she had no other place to go to and as she was closely attached to him and required his constant care and attention. He said that he was prepared to refund to the Plaintiff her total contribution towards the former matrimonial home so as to enable her to cancel her name as a joint tenant thereof so that she could purchase another Housing Board flat. He asked that the Plaintiff's application be dismissed with costs.

At the hearing before me, Defendant's counsel said that the Plaintiff had sufficient means as she was gainfully employed and could afford to rent alternative accommodation for herself and the two children. When questioned by the court, Counsel for the Defendant said that he, the defendant was paying $283 per month as monthly instalments for the former matrimonial home. He said he did not know if $283 was sufficient for the Defendant to rent a room for himself. He added that the Defendant had one brother and 3 sisters, all married. When asked what

made the Defendant think that he was the only person duty bound to provide accommodation for his mother, Defendant's counsel replied that the Defendant's mother was very close to him and that Defendant's brother and sisters had their own families to look after.

In reply, counsel for the Plaintiff said that he did not accept the figures given by the Defendant relating to his income but added that for these proceedings the Defendant's income was irrelevant. The matrimonial home was purchased for the Defendant's family and not for his mother. The Defendant's brother owned five houses in Merryn Road and could easily provide accommodation for the mother.

After considering the submissions of both counsel and the facts as disclosed in the affidavits filed in these proceedings, I came to the conclusion that as the flat in question was purchased jointly by the Plaintiff and the Defendant as their matrimonial home for the benefit of the family, the court should not endorse the Defendant's action in compelling his wife and children by his cruelty to leave the flat and should not back up such action by ordering the Plaintiff to sell her share in the matrimonial home to the Defendant.

In my view, the Plaintiff and the two children of the marriage have a right to reside in the matrimonial home. The Defendant's mother has no claim on it. As the Plaintiff is prepared to refund to the Defendant whatever monies he had paid towards the purchase price of the matrimonial home, I consider it equitable in the circumstances of this case that the Defendant should be ordered to deliver up to the Plaintiff possession of the matrimonial home and to convey and transfer all his rights, powers and interests in the said property to the Plaintiff. I accordingly made the order referred to above and ordered the Defendant to pay the costs of these proceedings as well. I also ordered the Registrar to determine what amount was payable by the Plaintiff to the Defendant pursuant to item (b) of my order herein. The Defendant, if he wishes, can apply to court to vary the maintenance order made against him on April 11, 1980.

Order accordingly.

Solicitors: *Allen & Gledhill; Francis Khoo & Lim.*

CHING KWONG KUEN v. SOH SIEW YOKE
SOH SIEW YOKE v. CHING KWONG KUEN

[A.C.J. (Chua J.) February 23, 1982]
[Singapore – District Court Appeal Nos. 2 & 3 of 1979]

Family Law – Marriage – Question of validity – Chinese couple performed simple ceremony – Lived together for 19 years and had 3 children – Whether magistrate erred in awarding maintenance – Whether there was a valid marriage.

Family Law – Maintenance – Whether there was a valid marriage.

Both the appellant (Ching) and the respondent (Soh) appealed against the magistrate's order ordering the appellant to pay the respondent $1,500 per month maintenance to the respondent and $1,000 per month for her daughter, Lena Ching.

The facts revealed that the respondent first met the appellant in 1957 when she was nineteen years old, and working in a bar. The respondent came from a family with humble background and the appellant from a rich and respectable family. At the end of 1958 they had sexual relations and he promised that he would marry her. Subsequently they lived together at her place in Geylang. The appellant kept putting off the subject of marriage until 1959, on the persistent promptings of the respondent's mother. On the 8th Moon in 1959, a simple ceremony was arranged and the appellant gave the respondent's mother $1,000 towards the expenses for the wedding. The respondent then bought cakes and distributed to her mother's and her own friends. On the day of the wedding both the respondent and the appellant served tea to the respondent's mother who then gave them each a red packet. The couple served tea to the respondent's aunts and they burnt joss-sticks and worshipped the Goddess of Mercy. The ceremony was attended by twenty to thirty people.

The respondent left the matrimonial home on May 26, 1977 after a violent quarrel with the appellant.

The appellant at the hearing of the maintenance summons disputed that the respondent was ever his wife despite the fact that they had been living together for nineteen years and she bore him three children. The appellant did not give evidence.

The issue before the court was what had to be proved to prove a Chinese customary marriage.

Held: (1) as to the law, the magistrate had correctly stated the principles to be applied to the case. With regard to the facts there was ample evidence on which the magistrate could reach the conclusion which he did that the respondent and the appellant had gone through a ceremony of marriage, that they had lived openly as husband and wife and that there was a valid marriage existing between;

(2) the appeal of the respondent would be allowed. The magistrate had not given any reason why he ordered the maintenance to commence from April 1, 1978 when the summons was taken out on July 26, 1977. The respondent and her daughter would therefore be entitled to maintenance from June 1, 1977.

Cases referred to:–

(1) *Cheang Thye Phin* v. *Tan Ah Loy* [1920] A.C. 369.
(2) *Er Gek Cheng* v. *Ho Ying Seng* [1949] M.L.J. 171.
(3) *Re Lee Siew Kow, deceased* [1952] M.L.J. 184.
(4) *Tay Geok Yap & Ors.* v. *Tan Lian Cheow* [1965] 1 M.L.J. 102.

DISTRICT COURT APPEAL.

Loh Lin Kok for the appellant.

Charles N. Mendis for the respondent.

Cur. Adv. Vult.

Chua J.: These two appeals arise from a maintenance summons No. 823 of 1977 taken by Soh Siew Yoke (Respondent) against Ching Kwong Kuen (Appellant) in the Magistrate's Court applying for maintenance for herself and her daughter Lena Ching. The Magistrate ordered the Appellant to pay $1500 per month maintenance to the Respondent and $1000 per month maintenance for Lena Ching with effect from the 1st April, 1978.

The Appellant now appeals against the decision and order of the Magistrate ordering him to pay $1500 p.m. maintenance to the Respondent (District Court Appeal No. 2 of 1979) and the Respondent now appeals against the order of the Magistrate ordering that the maintenance for her commenced on the 1st April, 1978, (District Court Appeal No. 3 of 1979).

The short facts are these. The Respondent came from a family with humble background and the Appellant from a rich and respectable family. The Respondent first met the Appellant sometime in 1957 when she was nineteen years